

Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
FM Table of Allotments )  
FM Broadcast Stations )  
(Fair Bluff, North Carolina, Litchfield )  
Beach, Johnsonville and Olanta, )  
South Carolina) )

MM Docket No. 00-226  
RM-10001

To: Chief, Allocations Branch,  
Mass Media Bureau

**COMMENTS ON NOTICE OF PROPOSED RULEMAKING**

Root Communications License Company, L.P., by its attorneys, respectfully submits these comments with regard to the proposed amendments to the FM Table of Allotments, Section 73.2002(b) of the Commission's rules, requested by Waccamaw Neck Broadcasting Company ("Waccamaw"), the licensee of FM radio broadcast station WPDT, Channel 286A, Johnsonville, South Carolina and Atlantic Broadcasting Company, Inc. ("Atlantic" and, collectively with Waccamaw, "Petitioners"), the permittee of FM radio broadcast station WSIM, Channel 287C3, Fair Bluff, North Carolina. Waccamaw proposes the reallocation of Channel 286A from Johnsonville to Olanta, South Carolina and Atlantic proposes the reallocation of Channel 287C3 from Fair Bluff, North Carolina to Litchfield Beach, South Carolina.

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Root is an interested party to this rule making proceeding because it owns several stations in the Florence and Myrtle Beach, South Carolina markets, the markets implicated by Petitioners' proposed amendments.<sup>1</sup> Root urges the Commission to reject Petitioners' proposed amendments because the proposed reallocations conflict with Section 307(b) of the Communications Act. Root believes that neither Litchfield Beach nor Olanta, South Carolina qualifies as a community for Section 307(b) purposes. In addition, Litchfield Beach is interdependent with Myrtle Beach and, therefore, ineligible for an award of a first local transmission service preference. Further, Waccamaw's proposal to reallocate Channel 286A from Johnsonville to Olanta would not result in a preferential arrangement of allocations because Johnsonville would be deprived of its sole local transmission service.

**LITCHFIELD BEACH AND OLANTA, SOUTH CAROLINA  
ARE NOT LICENSABLE COMMUNITIES**

The Communications Act directs the Commission to allocate "frequencies . . . among the several States and communities . . . ."<sup>2</sup> The Commission does not have a precise definition of community; rather a community is defined as a "geographically identifiable population grouping."<sup>3</sup> The Commission has found no single attribute, except a resident population, to be the *sine qua non* of community. The Commission considers the following criteria in its determination of whether a location is a community for allocation purposes: incorporation or

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<sup>1</sup> Root is the licensee of radio broadcast stations WJMX(AM), Florence, WJMX-FM, Cheraw, WDAR-FM and WPFM(AM), Darlington, WSQN(FM), Scranton, WGSS(FM), Kingstree, and WEGX-FM and WDSC(AM), Dillon, all in the Florence, South Carolina market. Root also is the licensee of FM radio broadcast stations WDZD, Ocean Isle Beach, North Carolina, WWXM, Garden City, WGTR, Bucksport, and WWSK, Briarcliffe Acres, South Carolina, all in the Myrtle Beach, South Carolina market.

<sup>2</sup> 47 U.S.C. §307(b).

<sup>3</sup> *Beacon Broadcasting*, 2 FCC Rcd 3469, 3470 (1987).

listing in Census Bureau reports,<sup>4</sup> testimony by residents of the locality, and objective indicia.<sup>5</sup> Acceptable objective indicia of community include political, commercial, social and religious organizations and services in the community.<sup>6</sup> The Commission further requires these organizations or services to have specific nexus or intent to serve the community in question.<sup>7</sup>

Petitioners provided information in support of Litchfield Beach and Olanta as licensable communities. However, the Allocations Branch found that Petitioners' information was not sufficient to establish either locality as a community and requested comments on the question. Based on Root's research, neither Litchfield Beach nor Olanta is qualified as a community under the Commission's requirements.

#### **Litchfield Beach, South Carolina**

Litchfield Beach is not included in Census Bureau reports, nor is it considered an incorporated area; and the South Carolina Department of Commerce does not list it as a community for profile purposes.<sup>8</sup> After diligent research, Root has been unable to determine a population figure for Litchfield Beach. In addition:

- a. Litchfield Beach does not have its own post office.
- b. The local business association is the Pawley's Island-Litchfield Business Association, which is located in Pawley's Island.
- c. Litchfield Beach does not have its own political structure; rather the area is under the jurisdiction of Georgetown County Council.

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<sup>4</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982).

<sup>5</sup> *Beacon Broadcasting*, 2 FCC Rcd at 3471.

<sup>6</sup> *Kenansville, Florida*, 5 FCC Rcd 2663, 2664 (1990).

<sup>7</sup> *Otter Creek, Florida, Notice of Proposed Rule Making*, 12 FCC Rcd 20302, para. 2 (1997).

<sup>8</sup> See South Carolina Department of Commerce at [http://167.7.248.237/scripts/cf\\_applications/cpro/simple.cfm](http://167.7.248.237/scripts/cf_applications/cpro/simple.cfm).

- d. Taxes are imposed by Georgetown County.
- e. Litchfield Beach is part of the Georgetown County School District. There are no elementary, middle or high schools located in Litchfield Beach.
- f. The police and fire protection for Litchfield Beach is provided by Georgetown County.
- g. Water services are provided by Georgetown County and trash services are privately supplied.
- h. Litchfield Beach does not have its own hospital.
- i. The residents of Litchfield Beach are predominantly retired; those who are employed work primarily in Conway, Myrtle Beach, Georgetown and Pawley's Island.
- j. The Coastal Observer, the local paper, refers to itself as Pawley Island's award-winning weekly.
- k. Litchfield Beach has no civic organizations, although it appears that the Litchfield Beach-Pawley's Island area may have one or two such organizations serving the area.
- l. The local library serves the entire area, including Pawley's Island.<sup>9</sup>

### **Olanta, South Carolina**

Olanta, South Carolina is a Census Bureau designated place with an estimated population of 687.<sup>10</sup> Designation as a Census Designated Place ("CDP") raises a presumption that an area is a community for allotment purposes, but CDP status does not by itself establish an area as a community.<sup>11</sup> Olanta has some indicia of community, such as a post office, library and police department. However, Olanta is not incorporated and is lacking most indicia of community. For example:

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<sup>9</sup> The above information regarding Litchfield Beach was gathered through discussions with the Georgetown Chamber of Commerce, the Waccamaw Neck Library and information developed through the Internet.

<sup>10</sup> [http://www.census.gov/population/estimates/metro-city/placebyst/SC99T7\\_SC.txt](http://www.census.gov/population/estimates/metro-city/placebyst/SC99T7_SC.txt)

<sup>11</sup> *Evergreen, Montana*, 15 FCC Rcd 9148, 9149 (2000).

- a. Olanta does not have a political structure, mayor or town council.
- b. Olanta does not provide government services.
- c. Olanta is a part of the Florence County School System (District 3).
- d. Olanta residents work primarily in Florence and surrounding areas.<sup>12</sup>

The Commission has repeatedly determined that unless petitioners demonstrate a nexus between political, social, economic and commercial activity and an area, that area will not qualify as a community for allotment purposes.<sup>13</sup> Neither Litchfield Beach nor Olanta has a political structure and their services predominately come from the county in which they are located. In fact, Litchfield Beach is lacking nearly all attributes generally associated with a community and Olanta lacks key attributes such as a political structure and government services. Accordingly, neither Litchfield Beach nor Olanta is a community eligible for allotment of radio services.

**LITCHFIELD BEACH IS NOT ELIGIBLE FOR AN AWARD OF A  
FIRST LOCAL SERVICE PREFERENCE**

Litchfield Beach's lack of community indicia and its proximity to Myrtle Beach raise a question as to whether Litchfield Beach should be considered a part of the Myrtle Beach urbanized area and, therefore, ineligible for a first local transmission service preference.<sup>14</sup> The Commission considers three factors when determining whether a proposal to serve a suburban community should receive a first local service preference: signal population coverage; the size

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<sup>12</sup> The above information regarding Olanta was gathered through discussions with the Olanta Public Library and information developed through the Internet.

<sup>13</sup> See *Littlefield Arizona*, 15 FCC Rcd 10263 (2000); *Pleasant Dale, Nebraska*, 14 FCC Rcd 18893 (1999); *Broadview Montana*, 14 FCC Rcd 14101 (1999).

<sup>14</sup> See *Eatonton et. al.*, 6 FCC Rcd 6580 (1991); *Faye and Richard Tuck*, 3 FCC Rcd. 5374 (1988).

and proximity of the suburban community to the metropolis; and the interdependence of the suburban community and the metropolis.<sup>15</sup> The size, proximity and interdependence between Litchfield Beach and Myrtle Beach support a determination that Litchfield Beach is a part of the Myrtle Beach urbanized area and, therefore, ineligible for a first local transmission service preference.

Litchfield Beach is located south of Myrtle Beach, separated from it by small beach communities.<sup>16</sup> Assuming for the purpose of the following calculation that Petitioners' population figure of 3,840 is accurate, Myrtle Beach's population is approximately 6.5 times the size of Litchfield Beach's.<sup>17</sup> In addition, Litchfield Beach has no newspaper serving its needs or interests; Litchfield Beach has no local government or elected officials; Litchfield Beach does not have a post office or its own zip code; and Litchfield Beach provides no municipal services such as police, fire, schools or libraries to its residents.<sup>18</sup> Many of the above services are provided by Georgetown County and the city of Myrtle Beach. Moreover, the majority of businesses located in the Litchfield Beach area serve its tourist industry rather than local residents.<sup>19</sup> Accordingly, Litchfield Beach is not an independent community and should be considered a part of the Myrtle Beach urbanized area. Thus, Litchfield Beach is not eligible for an award of a first local transmission service preference. And if Litchfield Beach is not eligible

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<sup>15</sup> *Eatonton et. al.*, 6 FCC Rcd at 6584.

<sup>16</sup> *See Rand McNally Road Atlas*, p. 88, map of South Carolina (1998 edition).

<sup>17</sup> The population of Myrtle Beach is approximately 25,495. *See* footnote 10 *supra*.

<sup>18</sup> *See* discussion of Litchfield Beach's characteristics as a licensable community *supra*.

<sup>19</sup> The businesses in the Litchfield Beach area include several resorts and hotels; real estate offices which offer vacation rentals; restaurants and bars; and golf courses and golf shops. *See* The Pawley-Island – Litchfield Business Association, [www.pilba.org](http://www.pilba.org).

for a first local transmission service preference, the allotment of Channel 287C3 to Fair Bluff, North Carolina is a more preferential arrangement of FM service.

**REALLOTMENT OF CHANNEL 286A FROM JOHNSONVILLE TO OLANTA DOES NOT SERVE THE COMMISSION'S POLICIES AND PRIORITIES**

The Commission has established priorities for FM channel allotments. These priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters.<sup>20</sup> Generally, petitions requesting a change in a community of license will be approved only if an allotment to the new community will serve the Commission's allotment priorities and policies better than the existing allotment and if the change will not deprive a community of an existing service representing its sole local transmission outlet.<sup>21</sup> The Commission, in rare circumstances, will consider requests to waive the prohibition against the removal of a sole local service if that removal will serve the public interest; however the Commission has stated that creation of a new local service at the expense of an existing service is not sufficient to warrant a waiver.<sup>22</sup>

Waccamaw's petition proposes to remove Channel 286A from Johnsonville, thereby depriving this community of its sole local transmission service. Waccamaw has argued that because station WPDT is not operating on a regular basis, the general public has not come to rely on its signal. Waccamaw also states that it has found a buyer willing to operate the station at Olanta. These are not sufficient reasons to deprive Johnsonville of its sole local service.

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<sup>20</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

<sup>21</sup> *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4874 (1989) (emphasis added), recon. granted in part, 5 FCC Rcd 7094 (1990).

<sup>22</sup> *Modification of FM and TV Authorizations to Specify a New Community of License*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7096 (1990).

Waccamaw has not established that the public is not relying on WPDT's intermittent signal. Waccamaw has not shown that it is unable to find a buyer willing to operate the station in Johnsonville. Waccamaw has not proposed to substitute a different allotment to Johnsonville. Waccamaw cannot show that Olanta has a larger population than Johnsonville.<sup>23</sup> Waccamaw has not established that its proposed reallocation would result in a gain in service to any underserved area, nor has Waccamaw established that Johnsonville will remain well-served. Therefore, Waccamaw has not demonstrated that its proposal meets one of those *rare* circumstances where removal will serve the public interest. Accordingly, Waccamaw's proposal does not serve the Commission's allotment priorities and its petition should be denied.

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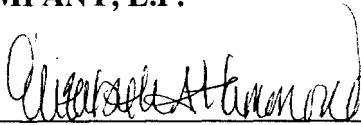
<sup>23</sup> Based on Census Bureau data for July 1999, Johnsonville's estimated population is 1,208 and Olanta's is 687. *See* footnote 10, *supra*.



WHEREFORE, for the foregoing reasons, Root respectfully requests that the Commission deny Petitioners' proposed amendments to the FM Table of Allotments, Section 73.202(b) of the Commission's rules, as proposed in the this rule making proceeding.

Respectfully submitted,

**ROOT COMMUNICATIONS LICENSE  
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December 26, 2000

**CERTIFICATE OF SERVICE**

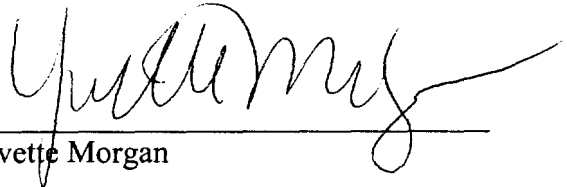
I, Yvette Morgan, a secretary at the law firm of Arter & Hadden LLP, hereby certify that a true copy of the foregoing Informal Objection of Primosphere Limited Partnership has been mailed by First Class United States mail, postage prepaid, this 26th day of December, 2000 to:

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